# Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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## CITA DROPS PRE-2005 TEXTILE AND APPAREL VISA REQUIREMENTS

A vast global bureaucracy that administered export licenses and visas for textiles and apparel subject to the Multilateral Fabric Agreement (MFA) for over 35 years is finally being put out of work with Washington's elimination of the last lingering paperwork requirements for trade in these goods. In a Federal Register notice July 5, the Committee for the Implementation of Textile Agreements (CITA) announced the cancellation, effective July 1, of all visa, license, ELVIS, and guaranteed access level (GAL) certification requirements for textiles and apparel that were subject to quotas before Jan. 1, 2005, when the MFA was terminated.

> Last December in anticipation of the end of MFA restrictions, CITA had cancelled visa and license requirements for goods exported from countries belonging to the World Trade Organization (WTO) after Jan. 1. It retained requirements for pre-Jan. 1 exports, as well as over-quota goods shipped in 2004. The latest notice retains paperwork requirements for socks from China that are the subject of a pending safeguard action.

Most goods that were subject to the pre-January restrictions probably have already been shipped, so the CITA announcement merely eliminates a superfluous requirement. For firms and governments that have lived under MFA restrictions all these years, however, the CITA announcement marks an end of an era (see **WTTL**, Dec. 20, page 3). Of course, those visa bureaucrats are now finding new jobs administering rules-of-origin certifications for the ever-growing number of bilateral and preferential trade agreements.

## BOEING CASE REFLECTS UNRESOLVED ISSUES ON JURISDICTION

Boeing's legal run-in with the State Department over allegations that the company exported airplanes containing a Munitions List component without obtaining licenses from the department may represent the start of a bigger battle the aviation industry faces over State's "see-through" rule and a lingering dispute over licensing jurisdiction for civil aircraft (see **WTTL**, May 23, page 1). According to a story first reported in the *Seattle Times* July 6, Boeing is in discussions with State over a proposed charging letter that claims the firm exported 96 aircraft containing the controversial QRS-11 gyroscope sensor between 2000 and 2003 without licenses even though it knew State required licenses.

A Boeing spokeswoman confirmed that the company is in talks with State but would not give any details. "Boeing has been in discussions with the State Department for many months concerning past deliveries of aircraft and spare parts with the QRS-11 sensor prior to the transfer

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of jurisdiction to the Commerce Department," a company statement said. According to the *Seattle Times* article, a draft charging letter claims Boeing was informed by Thales, the maker of the backup gyroscope instrumentation, that the QRS-11 chip in the equipment was considered to be subject to the International Traffic in Arms Regulations (ITAR) and would require a State license. Boeing's imminent sale of two jets containing the QRS-11 chip to China in September 2003 resulted in a last-minute waiver by President Bush to permit the sale under the Tiananmen Square sanctions on China but also to a complete review of the policy on the QRS-11. That review led to a special deal that shifted jurisdiction for sensors containing the chip to the Bureau of Industry and Security (BIS).

> Before the sale of the planes to China, Boeing was in negotiations with State over licensing jurisdiction for civil aircraft, according to industry and legal sources. A "white paper" prepared by Boeing attorney's Miller & Chevalier in Washington tried to defend the legal basis for civil aircraft being subject to BIS jurisdiction under a 10-year-old policy that had shifted civil aircraft to Commerce. State reportedly rejected the arguments in the paper and insisted on its jurisdiction.

Boeing's resistance to State's claims of jurisdiction may be one of the reasons the department is going after the company and not several other companies that reportedly installed similarly controlled navigation systems in their planes, including Airbus, Cessna and Gulfstream. Industry sources also point to the staff of the House International Relations Committee (HIRC) as a factor because of their opposition to any liberalization of defense trade controls.

Regardless of the outcome of the case against Boeing, industry sources say the failure of the government to address the ramifications of the "see-through" rule, which says any ML component in a finished product makes the whole product an ML item, will become more serious as the Pentagon plays a smaller and smaller part in the R&D and sales of aerospace and aviation companies. They point to the expected commercialization of ultralight jets and unmanned aerial vehicles (UAVs) as a challenge that could drive development of these products offshore if State insists on keeping them on the ML.

## DOES ANYONE CARE ABOUT SUCCESS OF DOHA ROUND?

As the G8 leaders of the industrial world were issuing their final declaration in Gleneagles, Scotland, calling for the successful conclusion of the Doha Round, World Trade Organization (WTO) Director General Supachai Panitchpakdi was offering a sobering assessment of the talks in Geneva. "These negotiations are in trouble," he warned the WTO General Counsel July 8.

> Supachai's judgment reflects a view shared by other WTO staffers, who also complain that the business community hasn't shown the intensity of interest in the Doha talks as it did in previous multilateral trade rounds. Business representatives who have visited Geneva in recent weeks have been urged to get their companies and associations more active in putting pressure on governments to move forward on key issues that have blocked the talks so far.

"Frankly, it is sobering to pass from the high level of expectations and hopes that I have encountered in Scotland to the reality of the negotiating process here in Geneva," Supachai told the WTO General Council. He had a similar negative view on statements that have come out of various ministerial meetings in the last year. "Very little of the political support which has been shown at successive ministerial meetings has been turned into concrete progress in the negotiating groups. Everyone has a generalized commitment to progress, but when it comes to the specifics, the familiar defensive positions take over," said Supachai, who is able to speak with the candor of someone who is leaving his WTO post in September.

A main problem with the Doha talks has been the continuing slow progress in the agriculture negotiations, which are seen as the most crucial element of the round. Beyond that hurdle, however, is the lack of economic motivation behind the talks in general. Rather than being

launched and driven by demands from the business community for lower trade barriers, the round's genesis was political. The idea for the round came initially from then-European Union Trade Commissioner Sir Leon Brittan who called in the late 1990s for the launching of a Millennium Round in 2000. Then-U.S. Trade Representative Charlene Barshefsky tried to one-up Brittan by hoping to launch the ill-fated Seattle Round in 1999. In pressing for a new round, neither Brittan or Barshefsky apparently realized – until the Seattle Ministerial – the trouble the developing world was having implementing the Uruguay Round agreements and the resistance in those nations to new trade commitments.

> In his report to the General Council, Supachai gave a snapshot of the status of talks in each of the Doha Round's major negotiating groups. In agriculture, although there has been some progress, it has "not yet sufficiently galvanized the negotiations on the most fundamental elements of the market access package," he said. For non-agriculture market access, "there were some hopeful signs in June, but now positions appear to be hardening," he reported. Supachai noted that some new and improve offers have come in on services trade liberalization, but "the quality of the offers continues to be poor."

## COURT UPHOLDS REJECTION OF TRADE SANCTIONS AGAINST STEEL IMPORTS

The International Trade Commission (ITC) has considerable discretion to focus antidumping and countervailing duty investigations on the latest data during a period of investigation (PoI) and doesn't have to give equal weight to data from the entire period, the Court of Appeals for the Federal Circuit (CAFC) ruled July 7 in a decision on *Nucor Corp. v. U.S.* (04-1373,1374). The ruling upholds a Court of International Trade (CIT) decision, which sustained the ITC's determination that the U.S. domestic steel industry isn't being injured by imports of cold-rolled steel products from 20 countries (see **WTTL**, Feb.23, 2004, page 4).

> The case was complicated because it was filed after President Bush had imposed extensive import relief for the U.S. steel industry through a Section 201 safeguard decision. The 201 relief significantly altered the conditions in the steel industry late in the PoI the ITC had found. CIT Judge Gregory Carmen in an extensive 115-page decision upheld the commission's judgment.

"Since the Commission has broad discretion to choose the most appropriate period of time for the investigation, it would be nonsensical to hold that once the Commission has chosen a period, it is required to give equal weight to imports throughout the period it has selected," the appellate court declared in an opinion written by Judge William C. Bryson. "We agree with the trial court that it was reasonable for the Commission to interpret the statutory language to permit it to accord different weight to imports during different portions of the period of investigation depending on the facts of each case," the court ruled.

## COURT AFFIRMS ITA POLICY ON LIQUIDATION OF IMPORTS FROM RESELLERS

The Court of Appeals for the Federal Circuit (CAFC) has attempted to straighten out several conflicting Court of International Trade (CIT) rulings on the International Trade Administration's (ITA) policy on the liquidation of antidumping duties on imports that were not the subject of an administrative review. In a second ruling June 21 in *Consolidated Bearings v. U.S.* (04-1556), which is being called *Consolidated II*, the appellate court said ITA has acted consistently in ordering the liquidation of such duties at the cash deposit rate.

This decision upheld a CIT ruling which reached the same conclusion. In two separate rulings July 1, the same three-judge appellate panel reversed differing decisions the CIT made in *Nissei Sangyo America (Hitachi High Tech) v. U.S.* (04-11492) and *Renesas Technology America v. U.S.* (04-1472). In *Consolidate II*, in an opinion written by Judge Raymond C. Clevenger, the CAFC found that ITA's consistent policy was to order Customs to liquidate imports of

"unreviewed entries from unrelated resellers at the cash deposit rate rather than the manufacturer's review rate, provided that the manufacturer does not have knowledge that its sales to the reseller are ultimately destined for the United States." In ordering the liquidation of antifriction bearings imported by Consolidated at the deposit rate, Commerce "did not arbitrarily depart from a past practice," the court ruled.

> The CAFC ruling is the latest in a series of cases that have reached the appellate court dealing with ITA and Customs procedures for liquidating imports subject to dumping or CVD orders (see **WTTL,** June 20, page 4). The CIT also has issued several rulings on the subject. Together, these cases send a cautionary note to all importers and domestic industries to be diligent in protecting their rights both administratively and judicially when goods are subject to dumping or CVD orders.

## UNIVERSITY RESEARCHERS OBJECT TO DEEMED EXPORT PROPOSAL

The Council on Government Relations (COGR), which represents universities involved in research, has joined the business community in filing comments opposing a BIS proposal that would tighten deemed export requirements on foreign nationals and controlled equipment. "A typical research university has thousands of pieces of equipment in its inventory, and hundreds, if not thousands, of new pieces are acquired each year," COGR told BIS. It said one university reported having 50,000 pieces of equipment in its labs. Another school said it had 70,000.

> Under the proposal, "each item of equipment would need to be evaluated for controls in relation to each foreign student and researcher on campus because, unless the open research environment is profoundly altered, any member of the campus community could encounter and receive use technology relating to any piece of equipment," it noted. COCR recommended amending the proposal to clarify that controlled 'use technology' within the context of university fundamental research "encompasses only information (including information in user manuals and information that may be subject to click-on or other non-exclusive license) that is not generally available to the public in the U.S."

A regulatory requirement based on a foreign national's country of birth "would be next to impossible to enforce, particularly against the dishonest," the Industry Coalition on Technology Transfer (ICOTT) told BIS in its comments on the proposal. "It is fairly easy to tell from an individual's passport and other documents where he currently has residence or citizenship, but it is a different matter to ascertain where he was born," the group wrote. AeA, formerly the American Electronics Association, cited the different policies on who can be a citizen, with many countries basing citizenship on descent and not place of birth. Thus, it noted, a child born in Germany before 2000 of Russian parents would not be a German citizen. "The OIG position would consider the child 'German' although he or she is a Russian citizen, with no claim to German citizenship or nationality, and may have returned to Russia," it wrote.

### * * * BRIEFS * * *

EXPORT ENFORCEMENT: After voluntary self-disclosure, Elan Pharmaceuticals of South San Francisco reached settlement agreement with BIS for export of conotoxin products to Belgium on four occasions without licenses. It agreed to pay $31,000 civil fine and conduct audit of its internal compliance program.

DENIAL ORDER: BIS has imposed five-year denial of exporting privileges on Mohammad Arastafar of Leidschendam, Netherlands, for his role in attempted unlicensed export of gas processor compressor parts by Chemical Industries Consolidated to Iran (see **WTTL**, May 9, page 4).

SOFTWOOD LUMBER: In fourth remand determination to NAFTA panel on ruling against its countervailing duty decision on softwood lumber from Canada, ITA recalculated CVD margin to 1.21%.

ITAR JAIL SENTENCE: As previously agreed as part of plea deal, U.S. District Court judge in Baltimore July 6 sentenced Abbas Tavakolian to 57 months in prison for attempting to export aircraft parts and components for F-4 and F-14 jets to Iran without license (see **WTTL**, April 18, page 3).